

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIR MICHAEL DYESS

CASE NUMBER

2:23-CV-06455-MEMF-JDE

Inmate # BS6620

PLAINTIFF(S)

v.

California Department of Corrections Rehabilitation

NOTICE OF DEFICIENCY RE:

DOCUMENT(S) RECEIVED IN VIOLATION
OF GENERAL ORDER 18-02

(CASE-INITIATING DOCUMENTS)

DEFENDANT(S)

On 08/03/2023, the United States District Court, Central District of California, received, through the United States Mail, a complaint arising under 42 U.S.C. § 1983 and bearing the caption set forth above. Please be advised that the Court and the California Department of Corrections and Rehabilitation ("CDCR") are participants in a pilot project that requires all such documents submitted by inmates at your institution to be scanned and submitted to the court by electronic mail. General Order 18-02. Submission of this complaint by U.S. Mail violates the terms of General Order 18-02.

To submit a complaint arising under 42 U.S.C. § 1983 to the court for filing, you must present it to designated staff at your facility for scanning and emailing to the court. If you are unable to comply with these procedures, you must submit with your complaint a motion for leave to file your documents by U.S. Mail that demonstrates good cause for your inability to submit your documents to the court electronically.

You must now re-submit your complaint to the court electronically. You must submit for scanning an exact copy of the complaint you previously mailed to the court; it cannot be modified in any way. You must include this notice on top of the complaint submitted for scanning. If your complaint is received in the court's electronic mail box within two weeks from the date of this letter, your complaint will be deemed filed as of the date that appears on the envelope you originally sent via U.S. Mail.

In addition, when you submit your complaint for scanning, YOU MUST INCLUDE AN APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES (CV-60P). Failure to provide an Application to Proceed Without Prepayment of Fees may lead to the dismissal of your case.

Clerk, U. S. District Court

08/03/2023

Date

By R. Smith (213) 894 3535

Deputy Clerk

CV-12 (07/22)

NOTICE OF DEFICIENCY RE: DOCUMENT(S) RECEIVED IN VIOLATION OF
GENERAL ORDER 18-02 (CASE-INITIATING DOCUMENTS)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SIR MICHAEL DYESS

PLAINTIFF(S)

v.

R. VASQUEZ LOPEZ, et al.

DEFENDANT(S).

CASE NUMBER:

2:23-cv-06455-MEMF-JDE

**NOTICE OF JUDGE ASSIGNMENT AND
REFERENCE TO A UNITED STATES
MAGISTRATE JUDGE**

This case has been assigned to the calendar of the Honorable Judge Maame Ewusi-Mensah Frimpong, U. S. District Judge, and referred to U. S. Magistrate Judge John D. Early, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary. Thereafter, unless the Magistrate Judge determines that a trial is required, the Magistrate Judge shall prepare and file a report and recommendation regarding the disposition of this case, which may include proposed findings of fact, conclusions of law, and proposed written order or judgment, which shall be served on all parties. If the Magistrate Judge concludes that a trial is required, the Magistrate Judge shall so report to the District Judge.

Pursuant to Local Rule 5-4.1, all subsequent documents in this case must be filed electronically, unless exempted by Local Rule 5-4.2. Documents exempt from electronic filing pursuant to Local Rule 5-4.2(b), or presented by filers exempt from electronic filing pursuant to Local Rule 5-4.2(a), must be filed with the Clerk in paper at the following location:

Southern Division
411 West Fourth St., Ste. 1053
Santa Ana, CA 92701-4516

Please note that, pursuant to Local Rule 83-2.5, all matters must be called to the judge's attention by appropriate application or motion filed in compliance with the Court's Local Rules. Parties are not permitted to write letters to the judge.

Local Rule 83-2.4 requires that the Court must be notified within five (5) days of any address change. If mail directed by the clerk to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within five (5) days thereafter of your current address, the Court may dismiss the petition, with or without prejudice, for want of prosecution.

Clerk, U.S. District Court

August 16, 2023
Date

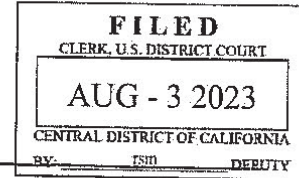
By /s/ Estrella Liberato
Deputy Clerk

NOTICE TO COUNSEL / PRO SE LITIGANT

The party who filed the case-initiating document in this case must serve a copy of this Notice on all parties it serves with the case-initiating document.

CV-25 (12/22)

NOTICE OF JUDGE ASSIGNMENT AND REFERENCE TO A UNITED STATES MAGISTRATE JUDGE



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Sir Michael Dyess

PRISONER/PLAINTIFF,

v.

Vasquez Lopez et al

DEFENDANT(S).

CASE NUMBER

2:23-CV-06455-MEMF-JDE

**REQUEST TO PROCEED WITHOUT
PREPAYMENT OF FILING FEES WITH
DECLARATION IN SUPPORT**

I, Sir Michael Dyess, declare under penalty of perjury, that the following is true and correct; that I am the prisoner-plaintiff in the above entitled case; that in support of my request to proceed without prepayment of fees under 28 U.S.C. Section 1915, I declare that because of my poverty I am unable to pay the full costs of said proceedings or to give security therefore and that I am entitled to redress.

I further declare under penalty of perjury that the responses which I have made to the questions and instructions below are true, correct and complete.

1. Are you presently employed in prison? ☐ Yes ☒ No

a. If the answer is yes, state the number of hours you work per week and the hourly rate of pay:

b. State the place of your incarceration WAC / CSP Hanford, CA
Have the institution fill out the Certificate portion of this application and attach a certified copy of your prison trust account statement showing transactions for the past six months.

2. Have you received, *within the past twelve months*, any money from any of the following sources?

- | | |
|---|---|
| a. Business, profession or form of self-employment? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| b. Rent payments, interest or dividends? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| d. Gifts or inheritances? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| e. Any other income (other than listed above)? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| f. Loans? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

If the answer to any of the above is yes, describe such source of money and state the amount received from each source during the past twelve (12) months: (Gifts) Not reliable / consistent, Over 7 Grand.

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts, if applicable.) ☐ Yes ☒ No

If the answer is yes, identify each account and separately state the amount of money held in each account for each of the six (6) months prior to the date of this declaration.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☒ No

If the answer is yes, describe the property and state its approximate value: _____

5. In what year did you last file an Income Tax Return? _____

Approximately how much income did your last tax return reflect? _____

6. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: _____

I understand that a false statement or answer to any question in this declaration will subject me to penalties for perjury. I further understand that perjury is punishable by a term of imprisonment of up to five (5) years and/or a fine of \$250,000 (18 U.S.C. Sections 1621, 3571).

California

State

Los Angeles

County (or City)

I, San Michael Dyess, declare under penalty of perjury that the foregoing is true and correct.

09/14/23
Date

[Signature]

Prisoner/Plaintiff (Signature)

PRISONER AUTHORIZATION

If my request to proceed without prepayment of filing fees is granted, I understand that I am required by statute to pay the full amount of the filing fees for this case, regardless of my forma pauperis status and the disposition of this case. I further authorize the prison officials at this institution to assess, collect and forward to the Court the full amount of these fees, in monthly payments based on the average of deposits to or balance in my prison trust account in accordance with 28 U.S.C. Section 1915.


Prisoner-Plaintiff (Signature)

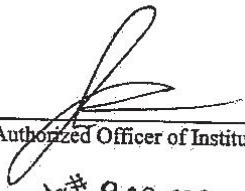
CERTIFICATE OF AUTHORIZED OFFICER

I hereby certify that the Prisoner-Plaintiff herein has credit in the sum of \$ 248.73 on account at the LAC/ESP institution where Prisoner-Plaintiff is confined.

I further certify that during the past six months the applicant's average monthly balance was \$ 30.00. I further certify that during the past six months the average of monthly deposits to the applicant's account was \$ 50.00.

A certified copy of the prisoner-plaintiff's trust account statement for the last six (6) months is attached.

7/25/23
Date


Authorized Officer of Institution (Signature)

Badge # 980893 Rivera

Court Central District of California

Sir Michael Dyess

Case Number

V. Plaintiff

Defendants

Declaration in Support
of Request to Proceed
Without Filing Fees

I Sir Michael Dyess declare under penalty of perjury I am a prisoner-plaintiff in the above entitled case Requesting (attached with institutional account history) to Proceed without prepayment of fees under 28 U.S.C. section 1915. If need be I will have an outside support pay the entire fee entirely as soon as possible

Respectfully Submitted

Sir Michael Dyess
BS6620#
LAC-CBP
P.O. box 8457
Lancaster, CA 93539

CLAIMANT INFORMATION

LAST NAME Dyess		FIRST NAME Sir Michael	MIDDLE INITIAL
INMATE OR PATIENT IDENTIFICATION NUMBER (if applicable) B56620		BUSINESS NAME (if applicable) Ø	
TELEPHONE NUMBER		EMAIL ADDRESS Sir Michael Dyess@gmail.com	
MAILING ADDRESS LAC-CSP P.O. Box 8457 Lancaster CA 93579		CITY Lancaster	STATE CA
ZIP 93539			
IS THE CLAIMANT UNDER 18 YEARS OF AGE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		INSURED NAME (Insurance Company Subrogation)	
IS THIS AN AMENDMENT TO A PREVIOUSLY EXISTING CLAIM? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		EXISTING CLAIM NUMBER (if applicable)	EXISTING CLAIMANT NAME (if applicable)

ATTORNEY OR REPRESENTATIVE INFORMATION

LAST NAME		FIRST NAME	MIDDLE INITIAL
TELEPHONE NUMBER		EMAIL ADDRESS	
MAILING ADDRESS		CITY	STATE
			ZIP

CLAIM INFORMATION

STATE AGENCIES OR EMPLOYEES AGAINST WHOM THE CLAIM IS FILED CDCR	DATE OF INCIDENT admitted to CDCR May, 2021
LATE CLAIM EXPLANATION (Required, if incident was more than six months ago)	

DOLLAR AMOUNT OF CLAIM 5,000,000	CIVIL CASE TYPE (Required, if amount is more than \$10,000) <input type="checkbox"/> Limited (\$25,000 or less) <input checked="" type="checkbox"/> Non-Limited (over \$25,000)
-------------------------------------	--

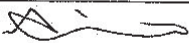
DOLLAR AMOUNT EXPLANATION So much pain and suffering continuously
INCIDENT LOCATION CDCR

SPECIFIC DAMAGE OR INJURY DESCRIPTION SKIN Rashes, Sick from swallowing wool fabric head aches, cancer agents putting me at high risk Arm hurts/collar bone already injured from cuffport due to low spec count, pain to genital

CIRCUMSTANCES THAT LED TO DAMAGE OR INJURY CDCR custody
--

EXPLAIN WHY YOU BELIEVE THE STATE IS RESPONSIBLE FOR THE DAMAGE OR INJURY They issue these items

AUTOMOBILE CLAIM INFORMATION		
DOES THE CLAIM INVOLVE A STATE VEHICLE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	VEHICLE LICENSE NUMBER (if known)	STATE DRIVER NAME (if known)
HAS A CLAIM BEEN FILED WITH YOUR INSURANCE CARRIER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	INSURANCE CARRIER NAME	INSURANCE CLAIM NUMBER
HAVE YOU RECEIVED AN INSURANCE PAYMENT FOR THIS DAMAGE OR INJURY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AMOUNT RECEIVED (if any)	AMOUNT OF DEDUCTIBLE (if any)

NOTICE AND SIGNATURE		
I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).		
SIGNATURE 	PRINTED NAME Sr. Michael Dyess	DATE 9/5/23

INSTRUCTIONS	
<ul style="list-style-type: none"> • Include a check or money order for \$25, payable to the State of California. <ul style="list-style-type: none"> • \$25 filing fee is not required for amendments to existing claims. • Confirm all sections relating to this claim are complete and the form is signed. • Attach copies of any documentation that supports your claim. Do not submit originals. 	
Mail the claim form and all attachments to: Office of Risk and Insurance Management Government Claims Program P.O. Box 989052, MS414 West Sacramento, CA 95798-9052	Claim forms can also be delivered to: Office of Risk and Insurance Management Government Claims Program 707 3rd Street, 1st Floor West Sacramento, CA 95605 1-800-955-0045

Department of General Services Privacy Notice on Information Collection

This notice is provided pursuant to the Information Practices Act of 1977, California Civil Code Sections 1798.17 & 1798.24 and the Federal Privacy Act (Public Law 93-579).

The Department of General Services (DGS), Office of Risk and Insurance Management (ORIM), is requesting the information specified on this form pursuant to Government Code Section 905.2(c).

The principal purpose for requesting this data is to process claims against the state. The information provided will/may be disclosed to a person, or to another agency where the transfer is necessary for the transferee-agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with California Civil Code Section 1798.25.

Individuals should not provide personal information that is not requested.

The submission of all information requested is mandatory unless otherwise noted. If you fail to provide the information requested to DGS, or if the information provided is deemed incomplete or unreadable, this may result in a delay in processing.

Department Privacy Policy

The information collected by DGS is subject to the limitations in the Information Practices Act of 1977 and state policy (see [State Administrative Manual 5310-5310.7](#)). For more information on how we care for your personal information, please read the [DGS Privacy Policy](#).

Access to Your Information

ORIM is responsible for maintaining collected records and retaining them for 5 years. You have a right to access records containing personal information maintained by the state entity. To request access, contact:

DGSORIM
Public Records Officer
 707 3rd St., West Sacramento, CA 95605
 (916) 376-5300

STATE OF CALIFORNIA
FEE WAIVER REQUEST
 DGS CRIM 005 (Rev. 09/19)

DEPARTMENT OF GENERAL SERVICES
 OFFICE OF RISK AND INSURANCE MANAGEMENT

CLAIMANT INFORMATION

FIRST NAME <i>Si Michael</i>	LAST NAME <i>Dyess</i>
CLAIM NUMBER (IF KNOWN)	TELEPHONE NUMBER <i>Ø</i>

If you are an inmate in a correctional facility, please attach a certified copy of your trust account balance.

INMATE IDENTIFICATION NUMBER

B56620

FINANCIAL INFORMATION

☐ I am receiving financial assistance from one or more of the following programs

- Supplemental Security Income (SSI) and State Supplemental Payments (SSP)
- California Work Opportunity and Responsibility to Kids (CalWORKS)
- CalFresh/SNAP (formerly Food Stamps)
- General Relief (GR) or General Assistance (GA)

☐ Number of household members and monthly household income are within one of the categories below.

Number of Household Members	Maximum Monthly Household Income
1	\$1,012
2	\$1,372
3	\$1,732
4	\$2,092
5	\$2,452
6	\$2,812

For each additional household member beyond 6, add \$360 to the maximum monthly household income

CLAIMANT CERTIFICATION

I request a waiver of the \$25 fee to file a government claim. I declare under penalty of perjury, per Penal Code Section 72, that the information provided on this application is true and correct.

Signature <i>Si Michael</i>	Date <i>9/4/23</i>
--------------------------------	-----------------------

Department of General Services
 Office of Risk and Insurance Management
 Government Claims Program
 PO Box 989052, MS 414
 West Sacramento, CA 95798-9052

1-800-955-0045 - File a Government Claim

Sir Michael Dyess
 FULL NAME

P.O. box 5457 L.A. Police
 COMMITTED NAME (if different)
 FULL ADDRESS INCLUDING NAME OF INSTITUTION

256620
 PRISON NUMBER (if applicable)

Received	<u>9-1-23</u>
	(Date)
Scanned at LAC and E-mailed	
on	<u>9-1-23</u>
	(Date)
by	<u>DR</u>
	(Initials)
Number of pages scanned:	<u>20</u>

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

SIR MICHAEL DYESS, v. R. VASQUEZ LOPEZ, et al., DEFENDANT(S).	CASE NUMBER <u>2:23-cv-06455-MEMF-JDE</u> <i>To be supplied by the Clerk</i> FIRST AMENDED
	CIVIL RIGHTS COMPLAINT PURSUANT TO <i>(Check one)</i>
	<input checked="" type="checkbox"/> 42 U.S.C. § 1983 <input type="checkbox"/> Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

- Have you brought any other lawsuits in a federal court while a prisoner: ☒ Yes ☐ No
- If your answer to "1." is yes, how many? 1

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

"Failure to summon medical care"
 "Medical Mal practices"

a. Parties to this previous lawsuit:

Plaintiff CDCA

Defendants CDCA

b. Court United States District Court

c. Docket or case number 2:23-cv-06455

d. Name of judge to whom case was assigned Early

e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) Pending

f. Issues raised: Medical Issues / treatment

g. Approximate date of filing lawsuit: 8/3/22

h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? ☒ Yes ☐ No

2. Have you filed a grievance concerning the facts relating to your current complaint? ☒ Yes ☐ No

If your answer is no, explain why not _____

3. Is the grievance procedure completed? ☒ Yes ☐ No

If your answer is no, explain why not _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff S. Michael Pyros

(print plaintiff's name)

who presently resides at LAC P.O. box 8457 Lancaster CA

(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

LAC P.O. box 8457 (C1) CYard cell #202

(institution/city where violation occurred)

1. Defendant A. Vasquez resides or works at
(full name of first defendant)
LAC P.O. box 8457
(full address of first defendant)
Peace officer / C/O
(defendant's position and title, if any)

Explain how this defendant was acting under color of law:

Correctional officer (peace officer) CDP

The defendant is sued in his/her (Check one or both): ☒ individual ☒ official capacity.

Explain how this defendant was acting under color of law:

Correctional Peace Officer of CDCR

3. Defendant _____ resides or works at

(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☒ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at _____
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at _____
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

D. CLAIMS*

CLAIM I

The following civil right has been violated:

- violations of 8th amendment
- Cruel and unusual punishment
- Safety from staff
- safety, protection, from staff misconduct
- Failure to protect
- ~~Mental Anguish~~ 14th Amend
- Rehabilitian Act
- (ADA) Act Violated
- Retaliation

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right. Federal civil Rights Act, 42 U.S.C. § 1983

① Defendant Vasquez Opened up my door at a time it wasn't supposed to be opened without my Request, and even if I did Request my door has set times its supposed to open. This officer violated the set time ahead of hours.

- Violations of the Eighth Amendment can never be justified. The Eighth Amendment is Not a "sometimes" or "maybe" Proposition."

② The door opened up allowing 3 white inmates to Run up the stairs and attack me while I'm walking to the correctional Guard. This being a good time to turn in contraband I found in my cell but I never Requested my door to get opened up. I tried to turn it in. Neither Guard knew I found contraband, and I was unaware I'd get attacked.

③ Defendant Escamero made a mistake spraying me seeing I was in an altercation with 3 male inmates. Maliciously and seductively.

*If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.

(Attached are more details to these paragraphs)

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

- Monetary Relief:
- Punitive Damages:
- Declaratory Judgment:
- Injunctive Relief:
Permanent Injunction: Get Every inmates Schedule of out cell time
Preliminary Injunction: Add to C/O conduct N/A
doors are opened ahead of or before hours.
- Monetary damages
Actions that can be brought to obtain compensation
for property loss or damage
- Money damages

8/23/23

(Date)



(Signature of Plaintiff)

Sir Michael Dyess
 FULL NAME

P.O. box 3457 San Diego
 COMMITTED NAME (if different)

156630
 FULL ADDRESS INCLUDING NAME OF INSTITUTION

156630
 PRISON NUMBER (if applicable)

Received 9-1-23
 (Date)

Scanned at LAC and e-mailed
 on 9-1-23 by CLC
 (Date) (Initials)

Number of pages scanned:
26

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

SIR MICHAEL DYESS, v. R. VASQUEZ LOPEZ, et al., PLAINTIFF DEFENDANT(S)	CASE NUMBER <u>2:23-cv-06455-MEMF-JDE</u> (Deputy Clerk)
	FIRST AMENDMENT CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. § 1983 <input checked="" type="checkbox"/> 42 U.S.C. § 1983 <input type="checkbox"/> 42 U.S.C. § 1983 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court at any time? ☒ Yes ☐ No
2. If your answer to "1." is yes, how many? 1

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

"Failure to provide medical care"
 "Medical malpractice"

- Plaintiff
- EDC

Defendants COCA

- b. Court Advised Robert

- c. Docket or case number 2:13-cv-00001

- d. Name of judge to whom case was assigned

- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) Dismissed

- f. Issues raised: AA and BBA

- g. Approximate date of filing lawsuit:

- #### h. Approximate date of disposition

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? ☒ Yes ☐ No

2. Have you filed a grievance concerning the facts relating to your current complaint? ☒ Yes ☐ No

If your answer is no, explain why not

3. Is the grievance procedure completed? ☒ Yes ☐ No

If your answer is no, explain why not.

4. Please attach copies of papers related to the grievance procedure.

This complaint alleges that the civil rights of plaintiff

who presently resides at

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

Los Angeles, California 90047 (C-1) 676-1 call #202
(instrumentary when under 100,000)

on (date or dates)

(Claim 1)

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant A. Vasquez resides or works at _____
 (full name of first defendant)
LAC P.O. Box 3459
 (full address of first defendant)
Peace officer / etc
 (defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☒ individual ☐ official capacity

Explain how this defendant was acting under color of law:

Correctional officer

2. Defendant Escareno resides or works at _____
 (full name of first defendant)
LAC P.O. Box 3459
 (full address of first defendant)
Peace officer / etc
 (defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☒ individual ☐ official capacity

Explain how this defendant was acting under color of law:

Correctional officer

3. Defendant _____ resides or works at _____
 (full name of first defendant)

 (full address of first defendant)

 (defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at _____
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law.

5. Defendant _____ resides or works at _____
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law.

The following civil right has been violated:

- Violations of the work
- Civil and human rights
- Safety from attack
- Safety, protection from harassment
- Failure to protect
- ~~Morale amongst~~
- Richard Lewis Act
- (AOA) Act
- Retaliation

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right. Filed in U.S. District Court, S.D. Cal. Case No. 03-10001-AMC Document 1-1 Filed 08/05/03 Page 1 of 1

① Defendant Vasquez argued if my door at a time it wasn't supposed to be open without my Request and even that also Request my door has all time always open to him. This officer violated the 4th Amendment. This violation is the 4th Amendment under the 4th Amendment. It's a sometimes or may Proposition.

② The door opened up for 3 seconds
I managed to run up the stairs and attack
me while walking in the corridor. I found
this house a great place to live in. I found
I found the my 6. I found the my 6. I found
my door to get open. I found to find it in. Neither
Good news I found contained and was unharmed but got attacked

③ Defendant assumes that the following are the TWC's
*If there is more than one claim, describe the additional claim on another attached piece of paper using the same outline.
(Indicate claim number below for these paragraphs.)

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

- Monetary Relief:
- Punitive Damages:
- Declaratory Judgment
- Injunctive Relief:
 - Permit Inspection: Get Every minute Schedule of out cell time
 - Detention: Inspect: Adm to (to conduct RDC
 - doors are opened ahead of or before hours
- Monetary damages
 - Action that can be brought to obtain compensation for property loss or damage
 - Money damages

8/23/23

(Date)



(Signature of Plaintiff)

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 SIR MICHAEL DYESS,
12 Plaintiff,
13 v.
14 R. VASQUEZ LOPEZ, et al.,
15 Defendants.
16
17

Case No. 2:23-cv-06455-MEMF-JDE
ORDER REGARDING
COMPLAINT

18 I.

19 INTRODUCTION

20 On August 3, 2023, the Court received from Sir Michael Dyess
21 ("Plaintiff"), a state prisoner at California State Prison, Los Angeles County,
22 proceeding pro se and seeking leave to proceed in forma pauperis, a civil rights
23 complaint under 42 U.S.C. § 1983 against two correctional officers, R. Vasquez
24 Lopez and M. Escareno (collectively, "Defendants"), in their individual
25 capacity only, for violations of the Eighth Amendment. Dkt. 1 ("Complaint").

26 Under 28 U.S.C. § 1915A(b), the Court must dismiss the Complaint if it
27 is frivolous or malicious, fails to state a claim upon which relief may be
28 granted, or seeks monetary relief from a defendant who is immune from such

1 relief. For the reasons explained below, the Complaint is subject to dismissal
2 for failure to state a claim upon which relief may be granted.

3 **II.**

4 **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

5 Plaintiff claims he was "set up by 2 officers working [his] housing unit
6 and 3 white male inmates." Complaint at 5 (CM/ECF pagination). He claims
7 as follows.

8 Plaintiff is a mental health inmate with single cell status. He had recently
9 moved to a new cell and alerted Lopez that he found a weapon in his cell.
10 Complaint at 5. Lopez opened Plaintiff's cell door, which occurred at
11 approximately 5:00 a.m., a couple of hours before breakfast. Plaintiff contends
12 he is "not an inmate that should or ever had his door opened before the 1st
13 meal of the day for any reason, not even if [he] requested." Id. at 5-6. Lopez
14 also "let out 3 white male inmates that were housed next door" to Plaintiff. Id.
15 at 5. It is unclear from Plaintiff's allegations whether Lopez opened the cell
16 doors at the same time, or whether the other inmates were already in the
17 common area.

18 As Plaintiff walked out of his cell towards the "floor cop" to turn in the
19 weapon, the three male inmates "ran up the steps screaming 'give us that
20 weapon' we're going to beat your axx [alteration in original]. We left that
21 weapon in that cell." Complaint at 5-6. Plaintiff backed away, but the other
22 inmates continued to approach, "throwing things" at him and "swinging on"
23 him. Plaintiff "swung closed fist back trying to defend" himself. Id. at 6.

24 Escareno then pepper sprayed Plaintiff in the back of the head while
25 Plaintiff's back was turned, which Plaintiff claims left him in "an even more
26 vu[l]nerable state with 3 inmates in front of [him] trying to engage in
27 violence." As more officers arrived, Plaintiff lay down on the ground, after
28 which he was handcuffed and escorted out. Plaintiff was told he could either

1 go to the administrative segregation unit pending a transfer or return to the
 2 same housing unit where the other inmates were located. It appears he chose
 3 administrative segregation. Complaint at 6. In an administrative grievance
 4 attached to the Complaint, Plaintiff further alleges that the other inmates hit
 5 him in the face with a water bottle, requiring outside medical treatment. Id. at
 6 11.

7 Based on the foregoing, Plaintiff seeks a declaratory judgment, monetary
 8 and punitive damages, and unspecified injunctive relief. Complaint at 7.

9 III.

10 STANDARD OF REVIEW

11 A complaint may be dismissed for failure to state a claim for two
 12 reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a
 13 cognizable legal theory. Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d
 14 1097, 1104 (9th Cir. 2008). Pleadings by pro se plaintiffs are reviewed liberally
 15 and afforded the benefit of the doubt. Erickson v. Pardus, 551 U.S. 89, 94
 16 (2007) (per curiam); see also Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
 17 (as amended). However, “a liberal interpretation of a civil rights complaint
 18 may not supply essential elements of the claim that were not initially pled.”
 19 Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
 20 (citation omitted). “[T]he tenet that a court must accept as true all of the
 21 allegations contained in a complaint is inapplicable to legal conclusions.”
 22 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

23 In assessing whether a complaint states a viable claim, the Court applies
 24 the same standard as it would when evaluating a motion to dismiss under
 25 Federal Rule of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”). See Rosati v.
 26 Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015) (per curiam). Rule 12(b)(6), in
 27 turn, is read in conjunction with Rule 8(a) of the Federal Rules of Civil
 28 Procedure (“Rule 8”). Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir.

2013). Under Rule 8, a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Rule 8(a)(2). Though Rule 8 does not require detailed factual allegations, at a minimum, a complaint must allege enough specific facts to provide both “fair notice” of the particular claim being asserted and “the grounds upon which [that claim] rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007) (citation omitted); see also Iqbal, 556 U.S. at 678 (observing that Rule 8 standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation”); Brazil v. U.S. Dep’t of Navy, 66 F.3d 193, 199 (9th Cir. 1995) (finding that even pro se pleadings “must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong”); Schmidt v. Herrmann, 614 F.2d 1221, 1224 (9th Cir. 1980) (upholding Rule 8 dismissal of “confusing, distracting, ambiguous, and unintelligible pleadings”).

Thus, to survive screening, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). A claim is “plausible” when the facts alleged support a reasonable inference that the plaintiff is entitled to relief from a specific defendant for specific misconduct. Id. Allegations that are “merely consistent with” a defendant’s liability, or reflect only “the mere possibility of misconduct” do not show “that the pleader is entitled to relief,” and thus are insufficient to state a claim that is “plausible on its face.” Id. at 678-79 (citations omitted). “Taken together, Iqbal and Twombly require well-pleaded facts, not legal conclusions that ‘plausibly give rise to an entitlement to relief.’ The plausibility of a pleading thus derives from its well-pleaded factual allegations.” Whitaker v. Tesla Motors, Inc., 985 F.3d 1173, 1176 (9th Cir. 2021) (citations omitted).

If the Court finds that a complaint should be dismissed for failure to state a claim, the Court has discretion to dismiss with or without leave to amend.

1 See Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave
 2 to amend should be granted if it appears possible that the defects in the
 3 complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31;
 4 see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that
 5 “[a] pro se litigant must be given leave to amend his or her complaint, and
 6 some notice of its deficiencies, unless it is absolutely clear that the deficiencies
 7 of the complaint could not be cured by amendment”). However, if, after
 8 careful consideration, it is clear that a complaint cannot be cured by
 9 amendment, the Court may dismiss without leave to amend. See, e.g., Chaset
 10 v. Fleer/Skybox Int’l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that “there
 11 is no need to prolong the litigation by permitting further amendment” where
 12 the “basic flaw” in the pleading cannot be cured by amendment).

13 IV.

14 DISCUSSION

15 A. General Standard for Civil Rights Claims

16 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a
 17 particular defendant, acting under color of state law, caused a deprivation of
 18 the plaintiff’s federal rights. See West v. Atkins, 487 U.S. 42, 48 (1988).
 19 Allegations regarding causation “must be individualized and focus on the
 20 duties and responsibilities of each individual defendant whose acts or
 21 omissions are alleged to have caused a constitutional deprivation.” Leer v.
 22 Murphy, 844 F.2d 628, 633 (9th Cir. 1988). A constitutional deprivation is
 23 “caused” when a person: (1) “does an affirmative act, participates in another’s
 24 affirmative acts, or omits to perform an act which he is legally required to do
 25 that causes the deprivation”; or (2) “set[s] in motion a series of acts by others
 26 which the [defendant] knows or reasonably should know would cause others to
 27 inflict the constitutional injury.” Lacey v. Maricopa Cty., 693 F.3d 896, 915
 28 (9th Cir. 2012) (en banc) (citation omitted); see also Taylor v. List, 880 F.2d

1 1040, 1045 (9th Cir. 1989) (holding liability under Section 1983 arises upon a
 2 showing of personal participation by the defendant). “A plaintiff must allege
 3 facts, not simply conclusions, that show that an individual was personally
 4 involved in the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d
 5 1193, 1194 (9th Cir. 1998).

6 **B. The Complaint Fails to State an Eighth Amendment Claim**

7 Plaintiff appears to assert two Eighth Amendment claims.¹ First, he
 8 claims Lopez violated his Eighth Amendment rights by failing to protect him
 9 from an assault by other inmates. Second, he claims Escareno’s use of pepper
 10 spray during the altercation with the other inmates constituted excessive force.

11 The Eighth Amendment prohibits “cruel and unusual punishments.”
 12 U.S. Const. amend. VIII. The treatment of a prisoner and the conditions under
 13 which a prisoner is confined are subject to scrutiny under the Eighth
 14 Amendment. Helling v. McKinney, 509 U.S. 25, 31 (1993).

15 1. **Failure to Protect**

16 “[P]rison officials have a duty . . . to protect prisoners from violence at
 17 the hands of other prisoners.” Farmer v. Brennan, 511 U.S. 825, 833 (1994)
 18 (alteration in original) (citation omitted). “Being violently assaulted in prison is
 19 simply not ‘part of the penalty that criminal offenders pay for their offenses
 20 against society.’” Id. at 834 (citation omitted). The Eighth Amendment protects
 21 against future harm to prisoners because prisoners must be furnished with
 22 “basic human needs,” including “reasonable safety.” Helling, 509 U.S. at 33
 23 (citation omitted).

25 ¹ Plaintiff also refers to “negligence.” See Complaint at 3, 5. It is unclear whether
 26 Plaintiff intends to state a separate, independent cause of action for “negligence,” as
 27 opposed to a theory underlying his Eighth Amendment claims: To the extent
 28 Plaintiff intends to assert a separate, state law claim for negligence, Plaintiff fails to
 state a claim on which relief can be granted because he has not explained how either
 Defendant is liable under this cause of action.

1 “A prison official’s ‘deliberate indifference’ to a substantial risk of
2 serious harm to an inmate violates the Eighth Amendment.” Farmer, 511 U.S.
3 at 828. This inquiry involves two parts, “one objective and one subjective.” See
4 Allen v. Sakai, 48 F.3d 1082, 1083 (9th Cir. 1995) (as amended) (citing
5 Farmer, 511 U.S. at 834). First, the prisoner must show that he was
6 “incarcerated under conditions posing a substantial risk of serious harm.”
7 Farmer, 511 U.S. at 834. Second, he must show that the prison official knew of
8 and disregarded an excessive risk to inmate health or safety. See Farmer, 511
9 U.S. at 837. “[T]he official must both be aware of facts from which the
10 inference could be drawn that a substantial risk of serious harm exists, and he
11 must also draw the inference.” Id.

12 Here, Plaintiff alleges that he was assaulted by three other inmates when
13 Lopez opened their cell doors early one morning after Plaintiff reported he
14 found a weapon in his cell. Complaint at 5-6. Plaintiff alleges that he is a
15 mental health inmate and his cell door should not have been opened at that
16 time of day. Id. at 5.

17 These allegations are insufficient to state an Eighth Amendment claim.
18 Plaintiff has not shown Lopez acted with deliberate indifference to his safety.
19 There are no factual allegations that Lopez knew Plaintiff was a mental health
20 inmate, that his cell door should not be opened at that time of day, or that
21 Plaintiff was at risk of assault by other inmates if his cell door was opened at
22 that time. The allegations of the Complaint reflect that Lopez opened
23 Plaintiff’s cell door for a legitimate security concern, namely, because Plaintiff
24 reported a weapon in his cell. Plaintiff has not alleged any facts from which it
25 reasonably could be inferred that Lopez was aware of and disregarded an
26 excessive risk to Plaintiff’s safety.

27 As currently pled, Plaintiff’s allegations are insufficient to state an
28 Eighth Amendment failure to protect claim.

1 2. Excessive Force

2 The Eighth Amendment prohibits the use of excessive physical force
3 against inmates. Farmer, 511 U.S. at 832. When prison officials are accused of
4 using excessive force, the “core judicial inquiry” is “whether force was applied
5 in a good-faith effort to maintain or restore discipline, or maliciously and
6 sadistically to cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per
7 curiam) (citation omitted). For claims of excessive force, the Eighth
8 Amendment inquiry has two components: (1) the objective component asks
9 whether “the alleged wrongdoing was objectively harmful enough to establish
10 a constitutional violation”; and (2) the subjective component asks “whether
11 force was applied in a good faith effort to maintain or restore discipline or
12 maliciously and sadistically for the very purpose of causing harm.” Beachchild
13 v. Cobban, 947 F.3d 1130, 1140 (9th Cir. 2020) (quoting Hudson v.
14 McMillian, 503 U.S. 1, 6-8 (1992)). In determining whether a use of force was
15 wanton and unnecessary, courts may consider such factors as: (1) the extent of
16 injury suffered by the prisoner; (2) the need for application of force; (3) the
17 relationship between that need and the amount of force used; (4) the threat
18 reasonably perceived by the responsible officials; and (5) any efforts made to
19 temper the severity of a forceful response. Hudson, 503 U.S. at 7. “From such
20 considerations inferences may be drawn as to whether the use of force could
21 plausibly have been thought necessary, or instead evinced such wantonness
22 with respect to the unjustified infliction of harm as is tantamount to a knowing
23 willingness that it occur.” Whitley v. Albers, 475 U.S. 312, 321 (1986).

24 Here, Plaintiff alleges that Escareno pepper sprayed him in the back of
25 the head during the altercation with the other inmates, which Plaintiff claims
26 left him in “an even more vulnerable state[.]” He claims it was “done
27 maliciously and sadistically for the purpose [of] causing harm due to the fact it
28 could have distracted [him] to the point [he] got assaulted more.” Complaint at

6. Such allegations are insufficient to state an Eighth Amendment excessive force claim. Plaintiff does not allege any injury, let alone sufficient facts to show directly or by reasonable inference that the use of force was not a good-faith effort to maintain or restore discipline, but done maliciously and sadistically to cause harm. As currently pled, the Complaint fails to allege facts sufficient to state a claim for excessive force rising to the level of an Eighth Amendment violation and is subject to dismissal.

V.

CONCLUSION AND ORDER

Based upon the deficiencies identified above, the Complaint is subject to dismissal. Accordingly, the Court provides Plaintiff with several options regarding how to proceed. **Within thirty (30) days of this Order**, Plaintiff must choose one of the following options and file the document required by that option:

1. If Plaintiff believes the deficiencies set forth above can be remedied, Plaintiff shall file a First Amended Complaint attempting to remedy the defects of the Complaint. Plaintiff's First Amended Complaint should bear the docket number assigned in this case; be labeled "First Amended Complaint"; be complete in and of itself without reference to the prior complaint or any other pleading, attachment, or document; and shall properly identify all defendant(s) and specify all facts upon which Plaintiff alleges a particular defendant caused an alleged constitutional violation. The First Amended Complaint may not alter the nature of this suit by alleging new, unrelated claims. The Clerk is directed to send Plaintiff a blank Central District civil rights complaint form, which Plaintiff is encouraged to use.

OR

OR

Plaintiff is cautioned that failure to timely file a fully compliant response as directed in this Order may result in the dismissal of this action for the foregoing reasons, failure to prosecute, and/or failure to comply with a court order.


JOHN D. EARLY
United States Magistrate Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRISONER/PLAINTIFF, v. DEFENDANT(S).	CASE NUMBER <div style="font-family: cursive; font-size: 1.2em;">2:23-CV-06455-MEMF-JDE</div>
REQUEST TO PROCEED WITHOUT PREPAYMENT OF FILING FEES WITH DECLARATION IN SUPPORT	

I, Sir Michael Dyess, declare under penalty of perjury, that the following is true and correct; that I am the prisoner-plaintiff in the above entitled case; that in support of my request to proceed without prepayment of fees under 28 U.S.C. Section 1915, I declare that because of my poverty I am unable to pay the full costs of said proceedings or to give security therefore and that I am entitled to redress.

I further declare under penalty of perjury that the responses which I have made to the questions and instructions below are true, correct and complete.

1. Are you presently employed in prison? ☐ Yes ☒ No

a. If the answer is yes, state the number of hours you work per week and the hourly rate of pay:

b. State the place of your incarceration LAC

Have the institution fill out the Certificate portion of this application and attach a certified copy of your prison trust account statement showing transactions for the past six months.

2. Have you received, *within the past twelve months*, any money from any of the following sources?

- | | | |
|---|------------------------------|--|
| a. Business, profession or form of self-employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| b. Rent payments, interest or dividends? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| d. Gifts or inheritances? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| e. Any other income (other than listed above)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. Loans? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If the answer to any of the above is yes, describe such source of money and state the amount received from each source during the past twelve (12) months: _____

REQUEST TO PROCEED WITHOUT PREPAYMENT OF FILING FEES WITH DECLARATION IN SUPPORT

3. Do you or any family member or friend have any account, including joint or trust accounts, (Include any funds in prison accounts, if applicable.) ☐ Yes ☒ No

If the answer is yes, identify each account and separately state the amount of money held in each account for each of the six (6) months prior to the date of this declaration.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☒ No

If the answer is yes, describe the property and state its approximate value: _____

5. In what year did you last file an Income Tax Return? 2020

Approximately how much income did your last tax return reflect? 0

6. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support:

NONE

I understand that a false statement or answer to any question in this declaration will subject me to penalties for perjury. I further understand that perjury is punishable by a term of imprisonment of up to five (5) years and/or a fine of \$250,000 (18 U.S.C. Sections 1621, 3571).

CA
State

L.A. Los Angeles
County (or City)

I, Sir Michael Dyes, declare under penalty of perjury that the foregoing is true and correct.

8/22/23
Date


Prisoner/Plaintiff (Signature)

PRISONER AUTHORIZATION

If my request to proceed without prepayment of filing fees is granted, I understand that I am required by statute to pay the full amount of the filing fees for this case, regardless of my forma pauperis status and the disposition of this case. I further authorize the prison officials at this institution to assess, collect and forward to the Court the full amount of these fees, in monthly payments based on the average of deposits to or balance in my prison trust account in accordance with 28 U.S.C. Section 1915.



Prisoner-Plaintiff (Signature)

CERTIFICATE OF AUTHORIZED OFFICER

I hereby certify that the Prisoner-Plaintiff herein has credit in the sum of \$ 318.00 on account at the LAC institution where Prisoner-Plaintiff is confined.

I further certify that during the past six months the applicant's average monthly balance was \$ _____. I further certify that during the past six months the average of monthly deposits to the applicant's account was \$ _____.

A certified copy of the prisoner-plaintiff's trust account statement for the last six (6) months is attached.

Date

Authorized Officer of Institution (Signature)

Case No. 23-06455-MEMF Motion for appointment of An

Attorney)

Dear Court,

I'm Requesting there a motion for the court to appoint me (Michael Oyesil) an attorney. I don't have funds to hire an attorney. I was looking for a lawyer to take the case on a contingency fee and or volunteer basis but none so far. I'm unable to represent myself adequate due to mental health problems and confinement issues, access to legal research. The law is complex and these suits are governed by many special rules of civil procedure and local court rules. The task of learning and following all the laws and rules, and gathering evidence for a trial is nearly impossible for a person with no training. Please Grant this Motion Under a Penalty of Perjury I swear the foregoing statements to be true. X X - Michael Oyesil 6/03/23

V.
Lopar, et al
Plaintiffs

United District Court
Central District of
California

Motion for leave to Amend
8/22/23

Addressing my complaint (# 2:23-cv-06455-MEMF-

JDE: Si Michael Dysolfice Paracetti v Taylor (98) USL U.S. 527

Request that the court acknowledges his courtroom motion for his complaint to be granted due to minor deficiencies detected. I've turned in my entire complaint, original copies, 120 copies were made.

Due to law finding in my trust account and low staffing here at (LAC) it is extremely hard to correspond with the staff as well as get access to the things and make copies. It doesn't mean that my complaint shouldn't be acknowledged or that I don't have one. However, if ~~and~~ any confusion please email or send via mail my original copies back to me. I can pay or have someone pay for the mailing. But I'm hoping this minor defect does not delay the court from getting my complaint process started. Also this complaint has video footage if used by. Please take into consideration my lack of access to things helpful to my case while in confinement.

Activity in Case 2:23-cv-06455-MEMF-JDE

Sir Michael Dyess v. R. Vasquez Et AL Notice

of Deficiency in Prison Email Pilot Project

Cev-12) Response

Sir Michael Dyess v. California Department of

Corrections/ R. Vasquez Et AL

Motion for leave to file my

Documents by U.S. Mail

ON 8/3/23 the court received through

the United States Mail, a complaint arising

under 42 U.S.C. 1983, ^{now is} ~~was~~ of General

Order No. 1802. I presented my documents

to the courts without having them scanned

and abiding by the pilot project guidelines.

This motion I'm requesting to have granted

by the courts is a Request to Proceed with

my complaint via U.S. Mail and to continue

my complaint and ^{now is} ~~was~~ acknowledged it along with

the attached documents exhausting all my remedies.

Attached with this motion is an internal letter as well.

Under a penalty of perjury all the foregoing statements

are sworn to be true to my best knowledge.

Inmate B56620

V.
Lopez Etal

United States Court
Central District of
California

Supporting Facts Regarding
the Complaint

2:23-cv-06455-
MEM-JDE-

Complaint Attachment/Amend.
Supporting Documents/Facts
Regarding Complaint

I. Introduction

This is a civil Rights complaint for declaratory relief and monetary damages. Injunctive Relief brought over the use of unreasonable unnecessary and excessive use of force in violation of the legal rights of plaintiff (Dyess) while he was incarcerated at the California State Prison LAC (Los Angeles county) by defendant Lopez. This is a civil Rights complaint brought over the failure to protect rights, cruel and unusual punishment and that is violating the plaintiff's Eighth Amendment. This is a "fair notice". Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 & n. 3 (2007) who else is being sued in individual capacity is officer Lopez who opened up my cell door for attack to take place.

II. Jurisdiction And Venue

1.) This is a civil Rights action under 42 U.S.C. § 1983 to redress the deprivation under color of state law of Rights, privileges and immunities guaranteed by the eighth Amendment of the United States Constitution. This court has Jurisdiction pursuant to 28 U.S.C. § 1331 and 1343. 2.) This court has Jurisdiction over

(42 U.S.C. § 1983)

8th Amendment to U.S.

The allegations contained in paragraphs 1 through 3 of complaint inclusive, are hereby incorporated by reference.

(Constitution Plaintiff Dyess V. Lopez Etal)

Defendant Lopez violated plaintiff's right to be free from cruel and unusual punishment guaranteed to the plaintiff by the 8th amendment of the United States Constitution by his actions of intimidation, abuse, harassment and other violations of law against plaintiff.

- Defendants wrongful actions alleged herein are in violation of 42 U.S.C. § 1983 because they have deprived plaintiff of rights, benefits and privileges secured by the United States Constitution.

Secured by the United States Constitution.

- Defendant (Lopez) acted under color of state law.

- Defendant (Lopez et al) ~~is~~ knew or should have known that his conduct, attitudes and actions created an unreasonable risk of serious harm to plaintiff.

- The actions and conduct of defendant (Lopez) demonstrate deliberate indifference to plaintiff's Eighth Amendment Rights.

- As a proximate result of the defendant's violation of plaintiff's right to be free from cruel and unusual punishment while he was AT LAC-CSP, Plaintiff has ~~suffered~~ suffered, is suffering, and will suffer irreparable harm.

- As a direct and foreseeable result of the defendant's violations of the Eighth Amendment, plaintiff has suffered, is suffering and will continue to suffer physical injuries in the form of damage to his lip, back of head, and other injuries.

- * The actions and conduct of defendants demonstrate deliberate indifference plaintiffs Eighth Amend ment Rights
- * As a proximate results of the defendants violation of plaintiffs right to be free from cruel and unusual punishment while he was at LAC-USP, Plaintiff has suffered, is suffering, and will continue to suffer irreparable harm.
- * As a direct and foreseeable result defendant violations of the Eighth amendment, plaintiff has suffered, is suffering and will continue to suffer physical injuries in the form of damage to
- * As a direct and foreseeable result of the defendant violations of the Eighth Amendment, plaintiff has suffered is suffering and will continue to suffer injuries in the form of pain and suffering, shame, humiliation degradation, emotional distress, embarrassment, mental distress and other injuries, ^{hospital care} Busted lip, mark to head, outside
- * An actual controversy exists between plaintiff and defendant concerning their rights, privileges, and obligations.
- * Defendants acts were willful, intentional, malicious, wanton, and despicable in conscious disregard to plaintiffs rights, entitling plaintiffs to an award of exemplary damages.

Prayer For Relief

Wherefore, plaintiff respectfully prays for relief as follows:
1.) Issue a declaratory judgement that the defendants actions complain of herein violate plaintiffs right under the U.S. constitution and as otherwise alleged herein.
2.) Award Plaintiff Monetary Damages, compensatory and punitive in an amount

Sgt Michael Dyess

Inmate #B86620 plaintiff

V,

CDCR Employees Lopez
Escareno, et al

United States District Court
Central District of California
Supporting Facts Regarding
Complaint (Case number)

2:23-cv-06455-MEMF
JDE

Statement of Facts
Connected to Officer Escareno's
Statement
From Plaintiff Declaration

I, plaintiff (Sgt Michael Dyess) have underlined several parts of Officer Escareno's initial statement about this incident that I present to the Court's chambers today. Proving this officer sprayed O/c maliciously and sadistically to further enhance his Request to "get down" while a violent altercation took place he pepper sprayed which at that time was Excessive Use of Force and deliberate indifference seeing that I was outnumbered 3 to 1 by attacking inmates that ran up the stairs initiating the violence. Some how it turned into failure to protect as well. Spraying at that time was an extremely bad call. The way the C/o (Escareno) words it he connects words in his sentences that makes it seem like a some point and time during this incident he became my target. While outnumbered by 3 inmates to one why would I be the one that looks like I'm not trying to get away from the attacking inmates. After Lopez opens my door at an unexpected time. Around the same time he let those 3 attacking inmates out and

1983 allows persons to sue state and local officials who violate federally-protected rights. Section 1983 reads as follows: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state, or ~~the~~ Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the Jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress. (see *Crumpton v. Gates*) (9th Cir. 1991) 947 F.2d 1418, 1420. All Remedies Where Exhausted (see 42 U.S.C. § 1997e(a)). *Bishop v. Lewis* (9th Cir. 1998) 155 F.3d 1094. The Requirement also applies even if the prisoner is not bringing a constitutional claim under § 1983, but is raising only claims under (the) (ADA) or the Federal Rehabilitation Act (see *O'Guinn v. Lovelock Corr. Center* 9th Cir. 2007) 502 F.3d 1056, 1066-1067. I am the person who suffered the deprivation of Rights see *Worth v. Seldin* (1975) 420 U.S. 490 [95 S. Ct. 2197; 43 L.Ed. 2d 343]. In case brought for injunctive relief under the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and the Rehabilitation Act (29 U.S.C. § 701(b)(1)(F)), plaintiffs can name the state itself as a defendant. See *Clark v. California* (9th Cir. 1997) 123 F.3d 1267; *Edwards v. California Dept of Corrections* (N.D. Cal. 2001) NO. C-00-0813 VRW, affirmed (9th Cir. 2002) 50 Fed. Appx. 366; see also *Hason v. Medical Board of California* (9th Cir. 2002) 279 F.3d 1167. I'm making this complaint demonstrating that the disability based discrimination I suffered also amounted to a constitutional violation. See United Gov.

(1991) 502 U.S. 1, 6-7 [112 S.Ct. 995, 117 L.Ed. 2d 156];
Whitley v. Albers (1986) 475 U.S. 312 [106 S.Ct. 1072],
89 L.Ed. 2d 251]. This act was done maliciously
and sadistically to cause harm, along with
the Watch Tower Correctional officer Vasquez Lopez
opening up my cell door at an unexpected time.

The foregoing is sworn to be true
and I swear under a penalty of
perjury that to the best of my
knowledge all these things are
facts. X *Am* 9/1/23.

Central District of California

Supporting Facts Regarding (Case number)
The Complaint 2:23-cv-06455-MEMF-JD

Sir Michael Dyess

Inmate # B56620
V. Plaintiffs

CDCA Employees R. Vasquez Lopez

Defendants

Notice of Court
Room Correspondence
Statement of Facts

THERE WAS A Mix up where my-06456-case Got labled as my-06455-case. (Attachments)
ON 9/1/23, I served on the United States District court,
Central District of California, threw scanning by the
institution 20 scanned pages pertaining to my claim
2:23-cv-06455-MEMF-JDE. Exhibits A threw are attached
documents supporting my claim. My claim was amended.
Please attach the already (in you guys custody) existing
supportive documents to this claim. These New existing
items have been scanned and Now I'm sending
original copies threw the U.S. Mail. IN these New supportive
documents showing I got injured (obtained outside hospital
evaluation) busted/split lip (upper) and an extreme amount of
Mase in the back of my head and facial area.
As well as staff statements and inappropriate behavior
in the computer system connected to my RVA. Along
with more statement of facts and case logs/citations
supporting the amended complaint. (see, eg Wolfe v. McDonnell
(1974) 418 U.S. 539, 555 [94 S. Ct. 2963; 41 L. Ed. 2d 935] The supreme court
has repeatedly has held that there must be an accomodation
between institutional needs and objectives and the provisions
of the constitution that are of general application. See Bell v.
Wolfish (1979) 441 U.S. 520, 545-546 [99 S. Ct. 1861; 60 L. Ed. 2d 477], quoting
Wolfe v. McDonnell (1974) 418 U.S. 539, 555-556 [94 S. Ct. 2963; 41 L. Ed. 2d 935]

actions of the defendants/inactions of the defendants was the actual cause of the deprivation of Rights. See *Lee v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633-634. See *Lee v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633. These claims attached to my complaint are not simple negligence or carelessness but "deliberate indifference." See *Branch v. Tunnell* (9th Cir. 1991) 937 F.2d 1382, 1386; see also *Foster v. Skinner* (9th Cir. 1995) 70 F.3d 1084, 1088 n. 7; *Barry v. Batelle* (S.D. Cal. 1997) 985 F. Supp. 1225, 1239. Mental suffering. See *Mimpho Community School Dist. v. Scharura* (1986) 777 U.S. 299 1308 [1065, ct. 2537; 91 L. Ed. 2d 2497]. The conduct violates/violated the law.

IN conclusion these attachments and supporting facts are sworn under a penalty of perjury by the plaintiff (X *Amir*) that the foregoing statements are true to the best of my knowledge. These Papers were filed at a later date than others concurrent to them is because the accessibility is extremely low to law library and other legal accommodations.

Date 9/1/23 *Amir* *Dur*

W. JESS
V. plaintiff

(Supporting Facts Regarding
Complaint)

~~Supporting~~
Lopez et al. defendant

Supporting Complaint/Supporting Facts/Documents Attached

Response to deficiencies Identified: To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a particular defendant, acting under color of state law, caused a deprivation of the plaintiff's federal rights. See *West v. Atkins*, 487 U.S. 42, 48 (1988). When discussing constitutional injury see *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012) (En ban) (citation omitted); see also *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) "Prison officials have a duty to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (alteration in original). Citation omitted. Being "violently assaulted" in prison is simply not part of the penalty that criminal offenders pay for their offenses against society." *Id.* at 834 (citation omitted). The Eighth Amendment protects against future harm to prisoners because prisoners must be furnished with basic human needs" including "reasonable safety." *Helling*, 509 U.S. at 33. Citation omitted). A separate cause of action is not sought for the staff misconduct/negligence at this time.

(Statement of Facts)
- Failure to protect claim (claims were perfected by state Board of control)
The entire incident is on video footage. I never requested for my cell door to be opened at any time of the day, on that day 5/31/23 or any other days since I've been incarcerated. The day and time the incident took place I asked the control tower (officer) was my water on? My cell water was having issues and I asked assuming they had a switch in the control tower for the water system and it got fixed yet. My door opened up. Never once did I try to report this contraband in any way shape or form other than talking up to a patrolling officer and turning it in to hand to hand. The tower or floor officer had no knowledge of the discovered contraband in my cell. Speaking to the tower about my water system he took it upon himself to open my door with 3 white male inmates already on the tier downstairs. My cell door is only supposed to be opened at the first mid of the day. Not before that or at my

Indifference; See Robinson V. Prunty (9th Cir. 2001) 249 F.3d 862, 866-867. Eighth Amendment claim after a long escalation of violence known to and facilitated by prison staff, adequately stated Eighth Amendment claim of "failure to protect" claim. This is not the first prison or first time at this prison where my door came open and violence occurred (Attached Are More Previous 602's). I was completely unaware these 3 inmates would run up the stairs looking to assault me by throwing weapons/ items used to be weapons at me. These prison officials state of mind (Especially the command tower) [Lopez] violated my 8th Amendment due to the deprivation being so sufficiently serious. See (Wilson V. Seitor) 1991-501 U.S. 294, 298 [111 S.Ct. 2321; 115 L.Ed.2d 271]. This objective component requires a deprivation of "minimal civilized measures of life's necessities," see Hudson v. McMillan (1992) 503 U.S. 1, 9 [112 S.Ct. 995; 117 L.Ed.2d 156], citing Rhodes v. Chapman (1981) 452 U.S. 337, 347 [101 S.Ct. 2392; 69 L.Ed.2d 597]. These are "basic human needs" that include "adequate food clothing, shelter, sanitation, medical care and personal safety." See Hoptowit V. Ray (9th Cir. 1982) 682 F.2d 1237, 1246. Serious or significant injury is not always required for an Eighth Amendment claim. (See) Hudson V. McMillan (1992) 503 U.S. 1, 4 [112 S.Ct. 995; 117 L.Ed.2d 156]. ~~There is~~ "Imminent danger" and the condition "is sure or very likely to cause serious illness and needless suffering, see Helling V. McKinney (1993) 509 U.S. 25, 33 [113 S.Ct. 2473; 125 L.Ed.2d 22] (exposed to cigarette smoke); The prison officials conduct was "wanton", see Wilson V. Seitor (1991) 501 U.S. 294, 302 [111 S.Ct. 2321; 115 L.Ed.2d 271]; Le Maire V. Maass (9th Cir. 1993) 12 F.3d 1444, 1451-1452. Also see Wilson V. Seitor (1991) 501 U.S. 294, 302 [111 S.Ct. 2321; 115 L.Ed.2d 271]; Estelle V. Gamble (1976) 429

U.S. 97, 104 [97 S. Ct. 285; 50 L. Ed. 2d 251]. He opened my door at a time it wasn't supposed to be. Regardless of a Request was made for it to be opened up or Not. An inmate can yell after hours 12 o'clock midnight for his door to be opened, Does that mean the staff should do it, No. Neither should it have been opened up in this case. A prison official acts with deliberate indifference if he or she knows of and disregards an inhumane condition or action that constitutes an excessive risk to inmate health or safety. That risk is obvious (opening someone's door at an unauthorized time, see *Farmer v. Brennan* (1994) 511 U.S. 825, 838-839, 842-843 [14 S. Ct. 2970; 128 L. Ed. 2d 811]. See *Id.* at 843, Fn. 8. This is apart of the "Crushing Avalanche" cases (See *Hernandez v. Denton* 9th Cir (1988) Reversed (*Denton v. Hernandez*) (1992) 504 U.S. 501).

② Excessive Use of Force

Plaintiff (sic Michael Dyess) alleges Escano pepper sprayed me while he was behind me and I faced the 3 attacking inmates still approaching me with weapons in their hands/on their person. Pepper spraying an inmate that is visually out numbered plus having his back to an approaching guard/the guard that pepper sprayed was not a guard operating on good faith, Nor was force being applied to maintain or restore discipline. Also the wrongdoing was objectively harmful enough to establish a constitutional violation. I suffered a burn Rash on the back of my ~~back~~ Neck and head, a busted lip from being distracted by officer spray, Mass in my Eyes (already damaged), and Pepper spray in my ear less of hearing for days! Reported all these things to medical. The timing of this use of Force ~~was~~ Evinced such wantonness with respect to the unjustified infliction of harm as is

Attorney General's office to Investigate 24 Shootings by Corcoran Prison guards, Los Angeles Times, Jan 14, 1999 at p. A3, including Prison Inquiry Calls shootings Unjustified, Nov 26, 1998 at p. A1; State Prison Altering Rules on use of Deadly Force, Oct 24, 1998, at p. A1; and only California Uses Deadly Force in Inmate Fights, Oct 18, 1999, at p. A1. See Christensen and Lishon, Prisons: A deadly Policy, Orange County Register, Oct 23, 1994, at p. 1; Moran and Hurst, Guard slayings at Prisons in state are high, Los Angeles Times Sept. 17, 1994 at p. A1. SEE Madrid V. Gomez (N.D. Cal 1995) 889 F. Supp. 1146, 1161-1181, 1254. SEE 15 CCA §§ 3268-3268.2, 3275-3276, and 3278. These Regulations set forth standards for the use of force and describe in a general way the CDCR's procedures for reporting and reviewing non-deadly and deadly force.

Pepper spray / stunbelts should not be used unless (see Hawkins V. Compere - Cassani) 9th Cir. 2001, 251 F.3d 1230, 1240-1242; Hawkins V. Compere - Cassani (C.D. Cal. Feb 6, 2002) NQ. CV-9805605 PDP, order. My door or any other inmates door should not be opened unless its on the scheduled time and an outnumbered inmate should not be pepper sprayed while trying to defend himself. It is directions when, why, where, and how to deploy OC to an inmate directions in the title 115 (inmate handbook for inmates) and they violated every policy (c/o Escareno) by spraying me. I swear under a penalty of perjury the foregoing statements to be true to best of my knowledge. Y.A. 22-5/23/23 (over)

Exhibit A (Frontback)

CDCR
REPORT NO. IRT161 - 12INCIDENT REPORT PACKAGE
INCIDENT LOG NUMBER: 00000000059180PAGE: 21
PROCESSED: 06/07/2023 11:37
REQUESTOR: M. Palomino

STG NAME	STG AFFILIATIONS	STG SUBSET
II - SENSITIVE NEEDS YARD (SNY)	<div data-bbox="812 283 1031 357" style="border: 1px solid black; padding: 2px;"> STG SET FAME (FUCK ALL MY ENEMIES) </div>	

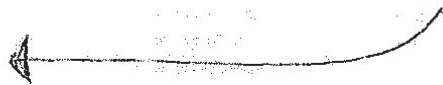

 District court/Judge, look how inappropriate these
 Correctional Guards computer system is! This
 is connected to my RVR process
 where guards are in here doing and
 saying some strange things and aren't
 losing their jobs. My situation I've complained
 to the court about (C/O Vasquez Lopez) opening
 my door at an unrestricted time allowing
 3 inmates to attack me.

Exhibit (B) Front Back

CDCR

INCIDENT REPORT PACKAGE

PAGE: 27

REPORT NO. IRT161 - 12

INCIDENT LOG NUMBER: 00000000059180

PROCESSED: 06/07/2023 11:37

REQUESTOR: M. Palomino

STAFF NARRATIVE

STAFF NAME: Camacho
CREATED DATE: 05/31/2023NARRATIVE TYPE: Initial Report
CREATED TIME: 12:50:03

NARRATIVE

On Wednesday, May 31, 2023, at approximately 0622 hours, while conducting my duties as Facility 'C' housing unit 2, floor officer 2, (BWC #231836). I responded to a personal alarm activation in housing unit 2. Once at the scene, I observed Officer Escareno on the top tier on A-section near cell 211. As I made my way up the B-section stairs, I heard Officer Escareno give loud and clear orders to "Get down". I observed four inmates down on the floor later identified as Inmate Speaker (AR9113), Inmate Thibodeau (J97060), Inmate York (AP2750) and Inmate Dyess (BS6620). I ordered Dyess who was directly in front of me to back up; Dyess complied and began to back up towards the sound of my voice. I handcuffed Dyess, conducted a clothed body search with negative results and assisted him to his feet. I relinquished custody of Dyess to Officer Palomino and we escorted Dyess out the housing unit. When we arrived to Facility 'C' Gymnasium, Officer Palomino offered Dyess the opportunity to decontaminate with cool running water. Dyess accepted and was escorted to the shower area where he decontaminated with cool running water. Dyess then advised us he was done decontaminating and was escorted to holding cell #2. Officer Palomino offered Dyess fresh set of clothing to which he refused. I then removed myself from the area. This concludes my involvement.

J. Camacho

STAFF SIGNATURE

DATE: 05/31/2023

BADGE #:

PERNR:

NARRATIVE REVIEWED: Yes

REVIEWED BY STAFF: Anderson,

REVIEWED DATE: 05/31/2023

REVIEWED TIME: 13:01:11

STAFF NAME: Rivas
CREATED DATE: 05/31/2023NARRATIVE TYPE: Initial Report
CREATED TIME: 13:41:57

NARRATIVE

On Wednesday, May 31, at approximately 0622 hours, while assigned as Facility C Building 1 Floor Officer #2 (BWC 231832), a code 1 alarm was initiated from within Housing Unit 1. As I was responding, I observed Correctional Officer T. Pacheco escorting an inmate who was later identified as York (AP-2750) in restraints. I provided coverage during the escort of York to Facility C Gymnasium (Gym), once inside the gym I searched holding cell 3 which yielded negative results for any contraband. Following my search of holding cell 3, I also searched holding cells 2 and 4 which also yielded negative for any contraband as additional escorts were being brought into the gym. This concludes my involvement in this incident.

B. Rivas

STAFF SIGNATURE

DATE: 05/31/2023

BADGE #:

PERNR:

NARRATIVE REVIEWED: Yes

REVIEWED BY STAFF: Palomino,

REVIEWED DATE: 05/31/2023

REVIEWED TIME: 13:45:49

STATE OF CALIFORNIA
GRIEVANCE
CDCR 602-1 (Rev. 01/22)

Exhibit C

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

	OGT Log No: _____	Date Received: _____
	Decision Due Date: _____	
	Categories: _____	

Claimant Name: Dyess, C/22/22 CDCR #: BSGG80
Institution/Parole Region: LAC Current Housing/Parole Unit: ASU(1)6

Use this form to file a complaint with the Department.

In order for the Department to understand your complaint, please answer all of the following questions:

- What is the nature of your complaint?
- When and where did the complaint occur?
- Who was involved?
- Which specific people can support your complaint?
- Did you try to informally resolve the complaint?
- What rule or policy are you relying on to make your complaint?
- What specific action would resolve your complaint?

NOTE: Attach documents that help support your complaint (identify the documents if you do not have them).

I'm back here for AA RVR. My cell was not searched when I tried to turn in a weapon I found to the C/O by 3 inmates who said it was theirs. (Staff misconduct)

My door was opened by watch tower to let attack happen at 6am. Approximately I don't get my door opened for any reason other than the 1st meal of the day. (another staff misconduct)

ADA Accessible

STATE OF CALIFORNIA
GRIEVANCE
CDCR 602-1 (Rev. 01/22)

Exhibit D

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 1 of 2

	OGT Log No: <u>416035</u>	Date Received: <u>JUN 27 2023</u>
	Decision Due Date: _____	
	Categories: _____	

Claimant Name: Dyer, S. Michael CDCR #: B8620
Institution/Parole Region: LAC Current Housing/Parole Unit: Asu G777

Use this form to file a complaint with the Department.

In order for the Department to understand your complaint, please answer all of the following questions:

- What is the nature of your complaint?
- When and where did the complaint occur?
- Who was involved?
- Which specific people can support your complaint?
- Did you try to informally resolve the complaint?
- What rule or policy are you relying on to make your complaint?
- What specific action would resolve your complaint?

NOTE: Attach documents that help support your complaint (identify the documents if you do not have them).

5/3/23 I came back to Asu. My door was wrongfully opened by Officer P. Vasquez Lopez at 16:22:31. I don't have any meds, work, education. Anything that would permit my door to be opened.

I saw officer Escamea walking down the tier (about 9 cells down) from mine. I told tower I found contraband in my cell (which was not searched when I got there) and tried reporting the contraband. Some how my cell door opened up & white men rushed up stairs to attack me.

I'm not guilty of any rule violations.

ADA Accessible

RECOGNITION AND REHABILITATION

2. I've stated I was attacked and I have testified before.

INJURIES TO BODY		YES	NO
Abuse/Assault			
Active Bleeding			
Bruises/Discolored Area			
Burns			
Choking			
Clasped Hand			
Concussion			
Crack 1/2 inch			
Crack 1/4 inch			
Crack 1/8 inch			
Crack 1/16 inch			
Crack 1/32 inch			
Crack 1/64 inch			
Crack 1/128 inch			
Crack 1/256 inch			
Crack 1/512 inch			
Crack 1/1024 inch			
Crack 1/2048 inch			
Crack 1/4096 inch			
Crack 1/8192 inch			
Crack 1/16384 inch			
Crack 1/32768 inch			
Crack 1/65536 inch			
Crack 1/131072 inch			
Crack 1/262144 inch			
Crack 1/524288 inch			
Crack 1/1048576 inch			
Crack 1/2097152 inch			
Crack 1/4194304 inch			
Crack 1/8388608 inch			
Crack 1/16777216 inch			
Crack 1/33554432 inch			
Crack 1/67108864 inch			
Crack 1/134217728 inch			
Crack 1/268435456 inch			
Crack 1/536870912 inch			
Crack 1/1073741824 inch			
Crack 1/2147483648 inch			
Crack 1/4294967296 inch			
Crack 1/8589934592 inch			
Crack 1/17179869184 inch			
Crack 1/34359738368 inch			
Crack 1/68719476736 inch			
Crack 1/137438953472 inch			
Crack 1/274877906944 inch			
Crack 1/549755813888 inch			
Crack 1/1099511627776 inch			
Crack 1/2199023255552 inch			
Crack 1/4398046511104 inch			
Crack 1/8796093022208 inch			
Crack 1/17592186044416 inch			
Crack 1/35184372088832 inch			
Crack 1/70368744177664 inch			
Crack 1/140737488355328 inch			
Crack 1/281474976710656 inch			
Crack 1/562949953421312 inch			
Crack 1/1125899906842624 inch			
Crack 1/2251799813685248 inch			
Crack 1/4503599627370496 inch			
Crack 1/9007199254740992 inch			
Crack 1/18014398509481984 inch			
Crack 1/36028797018963968 inch			
Crack 1/72057594037927936 inch			
Crack 1/144115188075855872 inch			
Crack 1/288230376151711744 inch			
Crack 1/576460752303423488 inch			
Crack 1/1152921504606846976 inch			
Crack 1/2305843009213693952 inch			
Crack 1/4611686018427387904 inch			
Crack 1/9223372036854775808 inch			
Crack 1/18446744073709551616 inch			
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Crack 1/590295810358705651712 inch			
Crack 1/1180591620717411303424 inch			
Crack 1/2361183241434822606848 inch			
Crack 1/4722366482869645213696 inch			
Crack 1/9444732965739290427392 inch			
Crack 1/18889465931478580854784 inch			
Crack 1/37778931862957161709568 inch			
Crack 1/75557863725914323419136 inch			
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Crack 1/302231454903657293676544 inch			
Crack 1/604462909807314587353088 inch			
Crack 1/1208925819614629174706176 inch			
Crack 1/2417851639229258349412352 inch			
Crack 1/48357032784585166			

Exhibit F

CDCR
REPORT NO. IRTR161-12INCIDENT REPORT PACKAGE
INCIDENT LOG NUMBER: 00000000059180PAGE: 24
PROCESSED: 06/07/2023 11:37
REQUESTOR: M. Palomino

STAFF NARRATIVE

STAFF NAME: Palomino,
CREATED DATE: 05/31/2023NARRATIVE TYPE: Initial Report
CREATED TIME: 18:20:33

NARRATIVE

On Wednesday, May 31, 2023, at approximately 0622 hours, Inmate's Speaker AR9113, Thibodeau J97060 and York AP2750 were observed battering Inmate Dyess BS6620 in Housing Unit 1, A section top tier. The Housing Unit alarm was activated and Chemical Agents (MK9) were utilized in order to quell the incident. After the use of force, Thibodeau, Speaker, and York stopped the attack, separated from Dyess and all involved assumed a prone position. While effecting custody, Officer M. Escareno observed Dyess in possession of an Inmate Manufactured Weapon. Dyess released the weapon and was immediately placed in restraints. Subsequently, Thibodeau, Speaker, York and Dyess were escorted out of the building in restraints to the Gymnasium where they were offered decontamination from the chemical agents and placed in holding cells. Thibodeau, Speaker, York and Dyess received medical evaluations and were independently interviewed regarding the incident. Thibodeau, Speaker and York signed the Peaceful Coexistence Chrono authored by Sergeant E. Anderson and were released back to their assigned housing unit. However, Dyess was placed in Administrative Segregation Unit (ASU) for "Possession of a Weapon."

It should be noted; Dyess refused to sign the Peaceful Coexistence Chrono and clearly indicated the presence of an on-going feud and escalating violence with Thibodeau, Speaker, and York if he was to return to Facility C.

ALARM

Officer Vasquez Lopez activated the Housing Unit alarm.

USE OF FORCE

Officer Escareno utilized one (1) OC MK9 Pepper Spray Streamer during this incident.

SUSPECTS

Speaker, C. (AR9113 / FCB1-204U)
Thibodeau, M. (J97060 / FCB1204L)
York, F. (AP2750 / FCB1-205U)

VICTIM

Dyess, S. (BS6620 / FCB1-203L)

WITNESS

N/A

EVIDENCE

A request for video footage was submitted via CDCR 1118 form for the following BWC Post numbers: (FROM 0621 THRU 0627 HRS)
231831, 231830, 231850, 231850, 231854, 231852, SPARE5, 231835, 231836, 231832, 230432.

A request for video footage was submitted via CDCR 1027 form for the following AVSS:
(FROM 0621 THRU 0627 HRS)

LAC-341-1071 (A), LAC-341-1072 #3, #4, #2, LAC-341-0029L, LAC-443-0069 #2, LAC-443-1254 #2, #3, #4.

ESCORTS

Officer's Makarade and Galvez escorted Inmate (S) Speaker from the incident site to the Gymnasium.
Officer Garcia escorted Inmate (S) Thibodeau from the incident site to the Gymnasium.
Officer Pacheco escorted Inmate (S) York from the incident site to the Gymnasium.
Officer's Camacho and Palomino escorted Inmate (V) Dyess from the incident site to the Gymnasium.

HOLDING CELLS

Officer Galvez initiated the holding cell #5 log for Speaker.
Officer Garcia initiated the holding cell #3 log for Thibodeau.
Officer Pacheco initiated the holding cell #4 log for York.
Officer Palomino initiated the holding cell #2 log for Dyess.

DECONTAMINATION

Inmate Speaker refused decontamination with cool running water and refused a clean set of state issued clothing during this incident.
Inmate Thibodeau refused decontamination with cool running water and refused a clean set of state issued clothing during this incident.
Inmate York refused decontamination with cool running water and refused a clean set of state issued clothing during this incident.

Exhibit G

CDCR

INCIDENT REPORT PACKAGE

PAGE: 33

REPORT NO. IRT161 - 12

INCIDENT LOG NUMBER: 00000000059180

PROCESSED: 06/07/2023 11:37

REQUESTOR: M. Palomino

STAFF NARRATIVE

STAFF NAME: Escareno, M
CREATED DATE: 05/31/2023NARRATIVE TYPE: Initial Report
CREATED TIME: 16:20:43

NARRATIVE

On Wednesday, May 31, 2023, at approximately 0622 hours, while performing my duties as Facility "C" housing unit 1 floor Officer 1 (BWC 231831), conducting my security checks of the A section cells on the top tier, I observed inmates SPEAKER (AR9113), THIBODEAU (J97060), and YORK (AP2750) together in front of cell 205 having a conversation with inmate DYESS (BS6620). Due to my distance, I was unable to hear exactly what words were exchanged between the inmates.

Without warning, I observed DYESS take a step back and get into a bladed stance with both his hands clenched in a fist. A few seconds after, I observed inmate THIBODEAU throw what seemed to be a water bottle towards DYESS facial area/upper torso. Due to my exact position, I was unable to observe where exactly the water bottle made contact to inmate DYESS. I unholstered my OC MK9 streamer pepper spray and gave multiple direct orders to all four (4) inmates to "GET DOWN" to which they did not comply as Inmate SPEAKER lunged forward towards DYESS with THIBODEAU and YORK following right behind him. The Housing Unit audible alarm was activated as DYESS began to run towards my direction with both hands clenched in a fist. At that moment I gave a direct order to inmate DYESS to "GET BACK" as he was still advancing towards my direction. DYESS did not comply with my orders as he continued moving in my direction. Based on DYESS body language as he was starting to run towards me with clenched fist, my perception was DYESS would either assault me or batter me in order to get passed my location. Therefore, sense DYESS was not complying to get down, I utilized my OC MK9 streamer pepper spray from approximately 5 feet away with a one (1) second burst to inmate DYESS facial area. However, due to DYESS erratic movement and speediness of the incident, I was unable to observe where exactly it made contact. It was my perception that if I did not utilize any use of force option, due to inmate DYESS aggressive demeanor and how quickly inmate DYESS approached me, I would have been physically assaulted. The OC MK9 streamer pepper spray had positive effects as inmate DYESS ceased his advancement towards myself. However, DYESS turned and faced Inmate's SPEAKER, THIBODEAU, and YORK with all four (4) inmates refusing to prone out on the ground.

Once responding staff arrived on site, inmates DYESS, YORK, SPEAKER, and THIBODEAU began to comply with orders as they assumed a prone position on the ground. Before assuming a prone position on the ground, I observed inmate DYESS who was directly in front of me, begin moving his right hand in a downward motion to the floor in order to break an unknown inmate manufactured object. DYESS then threw a piece of that unknown object to the bottom tier. DYESS then while assuming a prone position, placed the unknown inmate manufactured object next to himself and placed his hands behind his lower back. While providing coverage on inmate DYESS, Officer J. Camacho placed him in restraints and escorted DYESS to Facility "C" gymnasium. Once all inmates were in restraints, I informed responding staff where exactly the inmate manufactured objects were located. I was unable to identify which responding Officer picked up the inmate-manufactured object due to the amount of responding staff on scene.

After review of the Audio Visual Surveillance system (AVSS) along with the Incident Commander, camera LAC-341-1071-(A) revealed, as inmate SPEAKER lunged forward towards DYESS, with SPEAKER's fist he battered inmate DYESS striking him in the facial area. Additionally, inmate THIBODEAU throwing a water bottle towards DYESS facial area/upper torso. A review of my BWC revealed, DYESS had in his possession an Inmate Manufactured Weapon throwing a water bottle breaking off the sharpened end and tossing it to the lower tier. Responding staff recovered the broken pieces and submitted into C/D Evidence room. It was documented the weapon was fashioned from a metal nail sharpened to a point affixed to a pen tied down by string, measuring approximately six (6) inches in length operating the pen as the handle. This concludes my report.

M. Escareno
STAFF SIGNATURE

DATE: 05/31/2023

BADGE #:

PERNR:

NARRATIVE REVIEWED: Yes

REVIEWED BY STAFF: Anderson,

REVIEWED DATE: 05/31/2023

REVIEWED TIME: 16:24:54